

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

MARKEVIUS LIVINGSTON,
ADC #129941

PLAINTIFF

v.

4:06CV01678HDY

RODNEY HAWKINS, et al.

DEFENDANTS

ORDER

This matter is before the Court on plaintiff's motions to compel, for sanctions, and for default judgment with respect to defendant Rodney Hawkins (DE ##22, 32, 26). Defendants have responded to the motions to compel and for sanctions (DE ##33)

In support of the motion to compel, plaintiff states that defendants have failed to properly respond to his request for production of documents. Specifically, plaintiff states he requested a transcript of the disciplinary hearing at issue, and copies of several ADC and Benton Unit policies. Plaintiff also moved for sanctions against defendants, for their failure to initially file a response to his motion to compel.

In their response, defendants state a transcript does not exist of the disciplinary hearing at issue, but they will retain the tape for purposes of trial. Defendants also state they will provide plaintiff with a transcript, should the Court order such. Initially, in response to plaintiff's request for copies of policies, defendants indicated such were available for his review in the law library at his Unit. However, plaintiff states in his motion to compel that his particular Unit does not have a law library and he does not have access to review such policies. Defendants then provided copies of the policies to plaintiff in their response to the motion. Defendants also ask the Court to deny plaintiff's request for sanctions, stating plaintiff was not harmed by the delay in their response to the motion, since the action has not yet been set for trial, and since plaintiff has not incurred attorney's fees or other expenses.

The Court finds plaintiff's motion to compel should be granted in part, to the extent that defendants should prepare a transcript of the disciplinary hearing at issue and provide such to the plaintiff, within forty-five days of the date of this Order. A copy also shall be filed with the Court. With respect to the remainder of plaintiff's requests, the Court will deny his motion, finding that defendants have provided him with copies of policies requested. The Court also does not find any bad faith on the part of the defendants or harm to the plaintiff due to the delay in the response to the motion, so the motion for sanctions will be denied.

With respect to plaintiff's motion for default judgment, the Court notes that by Order dated December 20, 2006, service of summons and plaintiff's complaint was issued to defendant Hawkins, and such was returned, executed, on January 29, 2007 (DE #10). As of this date, defendant Hawkins has not filed an answer to plaintiff's complaint. Based on such, plaintiff now asks for the entry of default judgment (by motion and affidavit) against defendant, pursuant to Fed.R.Civ.P. 55.

According to Fed.R.Civ.P. 55(a), entry of default is appropriate when a party fails to plead or otherwise defend, and that fact is made to appear by affidavit or otherwise. In light of plaintiff's motion and affidavit, the Court will direct the entry of default against defendant Hawkins. The Court will also direct defendant Hawkins to file a response, within fifteen days of the date of this Order, to plaintiff's request for the entry of a default judgment against him. Accordingly,

IT IS, THEREFORE, ORDERED that plaintiff's motion to compel (DE #22) is GRANTED IN PART, with respect to his request for a transcript of the disciplinary hearing at issue, and DENIED in all other respects. Defendants shall provide such transcript to the plaintiff and the Court, within forty-five days of the date of this Order.

IT IS FURTHER ORDERED that plaintiff's motion for sanctions (DE #32) is hereby DENIED.

IT IS FURTHER ORDERED that plaintiff's motion for the entry of default (styled as default

judgment) against defendant Rodney Hawkins (DE #26) is hereby GRANTED. The Clerk of the Court is hereby directed to enter the party's default.

IT IS FURTHER ORDERED that defendant Hawkins shall respond to plaintiff's request for the entry of a default judgment against him, within fifteen days of the date of this Order.

The Clerk of the Court is hereby directed to forward a copy of this Order to defendant Hawkins at the address noted in the file.

IT IS SO ORDERED this 20 day of April, 2007.

A handwritten signature in black ink, appearing to read "H. Daniel Young". The signature is written in a cursive, flowing style.

United States Magistrate Judge